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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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EXCEPTION

Attorney Docket No.: ISPH-0537

Inventors: Dean et al.

Serial No.: 09/800,629

Filing Date: March 7, 2001

Examiner: Gibbs, Terra

Group Art Unit: 1635

Title: Antisense Modulation of Interleukin-5  
Signal Transduction

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On February 21, 2003

Jare Massey Licata Registration No. 32,257

Assistant Commissioner for Patents  
Washington, DC 20231RESPONSE TO RESTRICTION REQUIREMENT

This is a reply to the Restriction Requirement mailed January  
22, 2003 setting a one month period for response. Please enter the  
following remarks into the record.

REMARKS

Claims 1, 2, 4-23, 28-54 and 67-72 are pending in this  
application. No new matter has been added by this paper.

Attorney Docket No. ISPH-0537  
Inventors: Dean et al.  
Serial No.: 09/800,629  
Filing Date: March 7, 2001  
Page 2

Reconsideration is respectfully requested in view of the following remarks.

The sequences of claims 1, 4, 5, 6, 13 and 40 of the present application have been subjected to a Restriction Requirement under 35 U.S.C. §121 and 37 C.F.R. §1.141 by the Examiner in this case. The Examiner has required Applicants to elect one sequence for examination. Claims 1, 4, 5, 6, 13 and 40 specifically claim antisense targeting SEQ ID Nos: 1, 78, 52, 53, 62, 132, 133, 176, 162, 166, 167, 169, 170, 171, 172 and 209 which are targeted to IL-5 and IL-5 receptor  $\alpha$ . The Examiner has further restricted the claims to one gene.

The Examiner suggests that the antisense sequences claimed each target and modulate expression of different genes and thus the instant antisense sequences are considered to be unrelated, since each antisense sequence claimed is structurally and functionally independent and distinct. The Examiner further suggests that the sequences are distinct as each SEQ ID NO. is a unique nucleotide sequence, and each sequence targets a different and specific region of IL-5 or IL-5 receptor  $\alpha$ , and each antisense upon binding to IL-5 or IL-5 receptor  $\alpha$ , functionally modulates (increases or decreases) the expression of the gene to a varying degree. Furthermore, the Examiner suggests that a search of more than one of the antisense

Attorney Docket No.: ISPH-0537  
Inventors: Dean et al.  
Serial No.: 09/800,629  
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Page 3

sequences claimed presents an undue burden on the Patent and Trademark Office. The Examiner has required Applicants to elect one sequence from claims 1, 4, 5, 6, 13 and 40.

Applicants respectfully traverse this restriction requirement.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP §802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

As acknowledged by the Examiner, all of the identified sequences share the ability to modulate Interleukin-5 signal transduction. Thus, Applicants respectfully disagree that the sequences set forth by the Examiner are distinct as being novel and unobvious over each other, as required by MPEP § 802.01.

Accordingly, reconsideration and withdrawal of the single sequence election requirement of the sequences recited in claims 1, 4, 5, 6, 13 and 40 is respectfully requested.

Attorney Docket No.:

ISPH-0537

Inventors:

Dean et al.

Serial No.:

09/800,629

Filing Date:

March 7, 2001

Page 4

-Further, any search identifying relevant prior art related to the modulation of Interleukin-5 signal transduction will also identify the relevant art to the Interleukin-5 receptor-a. Thus, there is not any additional burden on the Patent Office, as a single search will uncover all of the relevant art to all of the sequences of the present invention as they relate to Interleukin-5 and the Interleukin-5 receptor-a.

However, in an earnest effort to be completely responsive, Applicants hereby elect to SEQ ID NO: 78 targeted to IL-5, with traverse.

Respectfully submitted,

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Date: February 21, 2003

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# FACSIMILE COVER SHEET

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February 21, 2003

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**GROUP 1600**

**GROUP: 1635**

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**MESSAGE:** Attached is a Response to the Restriction Requirement mailed January 22, 2003.

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AMENDMENT TRANSMITTAL LETTER (Small Entity)	Docket No. ISPH-0537
Applicant(s): Dean et al.	

Serial No. 097800.629	Filing Date March 7, 2001	Examiner Terra Gibbs	Group Art Unit 1635
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Invention: ANTISENSE MODULATION OF INTERLEUKIN-5 SIGNAL TRANSDUCTION

## TO THE ASSISTANT COMMISSIONER FOR PATENTS

Transmitted herewith is an amendment in the above-identified application.

- ☒ Small Entity status of this application has been established under 37 CFR 1.27 by a verified statement previously submitted.
- ☐ A verified statement to establish Small Entity status under 37 FR 1.27 is enclosed.

The fee has been calculated and is transmitted as shown below.

### CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA- CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	56	73	0 x	\$9.00	\$0.00
INDEP. CLAIMS	6	6	0 x	\$42.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00

- ☒ No additional fee is required for amendment.
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- ☒ Any additional filing fees required under 37 C.F.R. 1.16.
- ☒ Any patent application processing fees under 37 CFR 1.17.

Dated: February 21, 2003

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CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)

Docket No.

ISPH-0537

Serial No.

09/800,629

Filing Date

March 7, 2001

Examiner

Terra Gibbs

Group Art Unit

1635

Invention: ANTISENSE MODULATION OF INTERLEUKIN-5 SIGNAL TRANSDUCTION

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